IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14037 of 2004
with
SPECIAL CIVIL APPLICATION No 14039 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASMUKHBHAI KASTURCHAND SHAH

Versus

HEIRS OF DAHIBEN WD/O. SHANABHAI BHULABHAI & HIRABHAI

Appearance:

1. Special Civil Application No. 14037 of 2004
MR AJ PATEL for Petitioner No. 1-5
..... for Respondent No. 1
MR NS PANCHAL for Respondent No. 1/1
MR DHAVAL M BAROT for Respondent No. 1/1
MR ARVIND B BAROT for Respondent No. 1/1-1/2
MS TRUSHA K PATEL for Respondent No. 2,4-5,7,9
NOTICE NOT RECD BACK for Respondent No. 3,6,8
MR DIPEN DESAI, Ld. AGP for Respondent No. 10-11

2. Special Civil Application No. 14039 of 2004
MR AJ PATEL for Petitioner No. 1
..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 24/12/2004

COMMON ORAL JUDGEMENT

1. Rule. Mr.Barot, learned Counsel waives service of rule on behalf of Respondents No.1/1-1/12, Ms.Trusha K. Patel, learned Counsel waives service of rule on behalf of 2, 4-5, 7 and 9 and Mr.Desai, learned AGP waives service of rule on behalf of State respondents in Special Civil Application No.14037/2004 and Mr.Desai, learned AGP waives service of rule on behalf of respondents No.1-3, 4-6 and Mr.Barot waives service of rule on behalf of respondents No.3/1, 3/2, 3/2-3/2 in Special Civil Application No.14039/2004. With the consent of the parties the matters are taken up for final hearing today.

2. Upon hearing the learned Counsel for the parties, it appears that the question which arise for consider by this Court is qua the entries to be mutated in the revenue record on the basis of registered sale deed and the entry made in the year 1972. Mr.A.J.Patel, learned Counsel for the petitioners in SCA No.14037/2004 has not pressed the petition for entry No.2127 and 2700, but he has only pressed the matter for entry No.2067 and No.2068 dated 20th September, 1995 which were on the basis of registered sale deed dated 12.8.1975, in Special Civil Application No.14039/2004 the subject matter of the petition is entry No.1900 dated 26.2.1972, whereby the name of the petitioner was included as co-owner and entry No.2248 dated 16.8.1976 which is based on the registered sale deed dated 21.2.1976. There is no dispute on the point of existence of registered sale deeds. There is also no dispute on the point that for the transaction based on the registered sale deed Civil Suit No.418/2004 and No.925/2003 have been preferred by contesting parties to the proceedings in this petition and such suits are pending before the concerned Civil Court. In Special Civil Application No.14037/2004, the Revenue Authority has proceeded on the basis that as entry No.1900 is illegal consequential entry also deserves to be cancelled. In Special Civil Application No.14039/2004 it has been considered by the authority that entry No.1900 is without there being any registered documents and it has also been observed that the same is in breach of the provisions of Section 84C of Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as the Tenancy act) and, therefore, the entry No.1900 is cancelled and the consequential entry made thereafter are also cancelled. There is no dispute on the point that

the proceedings under Section 84C of the Tenancy Act were initiated against the petitioner in respect to the transaction for purchase of the land by registered sale deed and such proceedings are ultimately dropped. In the appeal also the order is not disturbed, however, Mr.Barot, learned Counsel appearing for the contesting respondents in both the petitions submitted that his clients have preferred revision before the Tribunal and the matter is pending there. As on today, the position is that there are no proceedings under Section 84C of the Tenancy Act, whereby there is no declaration of the Competent Court that the transaction or registered sale deed is barred under the provisions of Tenancy Act.

3. It is settled that the registered sale deed must be reflected in the revenue record, even if such transaction may be in breach of other enactment, may be Tenancy Act or the other Act. This Court had an occasion to consider the matter in case of "JAYANTILAL JETHALAL SONI Versus STATE OF GUJARAT" in Special Civil Application No.12547/2004 and in its decision on 28.9.2004 at paragraphs 7, 8, and 9 it was observed as under:

"7. It appears that if a registered sale deed is executed by the holder of the land, it confers the right pertaining to the land in question in favour of the purchaser of the land and, therefore, the rights pertaining to the land in question in normal circumstances can be said to have been acquired over the land in question for which recording is required to be made in the revenue record. It is also well settled that the revenue entries are having value only for fiscal purpose and more particularly for the purpose of recovery of revenue and it neither confers any right or title over the property, nor does it take away the right or title in the property which otherwise cannot be available under the law. However, the question which arises for the consideration is if a sale deed is executed by the holder of the land which runs prima facie counter to the other statutory provisions of other enactment or is barred under the other enactment or it alters or disturbs the rights of the persons under the other enactment then, can the revenue authority shut its eyes by ignoring such flagrant violation of such law or if it is considered, what will be the proper course to be followed ? In case of "Evergreen Apartment Co-op. Housing Society" (supra), this Court has

expressed the view that it is not open to the revenue authority exercising power under the Code to exercise power under the other enactment and to decide in respect to the breaches which are committed under the other enactment and thereby to uncertify the entry or to cancel the entry made in the revenue record. In case of "Janardan D. Patel v. State of Gujarat" (supra) at para 11, it has been observed as under:

"11. If any such question arises, the matter should be referred to the authority empowered to deal with under the said other enactment. For example, the validity of a transaction on the basis of Sec. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief) is sought to be challenged. That question cannot be decided by revenue authorities in RTS proceedings. In such situation, the correct procedure to be followed would be to refer the matter to the authority empowered under the Tenancy Act for his decision. The necessary mutation entry may be made only after the decision of that authority under the Tenancy Act is received. It would, however, not be open to revenue authorities in RTS proceedings to decide that question."

8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgement, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely affecting the rights under the other enactment

and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to the final decision which may be taken by the competent authority under the other concerned enactment. This Court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not.

9. In view of the above, it cannot said that the orders passed by all the authorities on the basis that the Mamlatdar has not inquired into the aforesaid three aspects namely as to whether there is any breach of the provisions of the Prevention of Fragmentation Act or the provisions of Tenancy Act, are absolutely without any basis and the orders can be maintained only to the extent that in case it is found by the Mamlatdar after remand that there are prima facie breach of the other enactment by the transfer in question, the revenue authority exercising power under the Code may refer the matter to the appropriate authority under the other enactment or may relegate the affected party to resort to appropriate proceedings under the other enactment and the entry may be considered subject to the final outcome in the proceedings under the other enactment, as observed hereinabove in earlier paragraphs."

4. Therefore, so far as the entries which are based on registered sale deed are concerned, the same cannot be cancelled in toto and it deserves to be restored in the revenue record with the clarification that they shall be subject to the outcome of the proceedings under Section 84C of the Tenancy Act which as per the contention of Mr.Barot are pending before the Revenue Tribunal. So far as entry No.1900 dated 26.2.1972 is concerned, the same was not directly the subject matte of the proceedings under Section 84C of the Tenancy Act which were initiated in respect to three registered sale deeds on the basis of which entries No.2067, 2068 and 2248 were mutated in the revenue record. It appears that after entry No.1900 dated 26.2.1972 the very land is sold by registered sale deed by deceased Dahiben through power-of-attorney holder Hirabhai Shanabhai and the sale deed is not signed by Hirabhai Krishnakantbhai, but only a reference is made to the entry No.1900 dated 26.2.1972 in the succession of title of the property. The land is sold subsequently by the owner who is shown in the revenue record. But even if it is the case of the contesting respondents through Mr.Barot that entry No.1900 dated 26.2.1972 is in breach of provisions of Section 84C of the Tenancy Act, then it would be for the appropriate authority under the said act to initiate the proceedings. In any event, the fact remains that the entry has continued for a long period and thereafter the land is already sold by registered sale deed. Therefore, the exercise of the power for cancellation of the entry which in view of the subsequent sale of the land in question by the registered sale deed

dated 21.2.1976, cannot be said as proper and justified on the part of the authority. If the contesting respondents who are represented by Mr.Barot are asserting any right in the property, it would be for them to prefer appropriate proceedings by preferring Civil Suit or they may resort to appropriate proceedings for identifying their rights, if any, in the property. It is well settled even otherwise also, the exercise of suo motu power cannot be undertaken after an unreasonable period and further revenue entries are having values for fiscal purposes and they never confer any title, nor do they alter any right in the property, which otherwise exists as per the provisions of Transfer of Properties Act or the relevant law for the time being in force.

5. Under the above circumstances, the impugned orders passed by the revenue authorities cancelling the entry No.1900 and subsequent entry No.2248 dated 16.8.1976 and entry No.2067 dated 20th September, 1975 and No.2068 dated 20th September, 1975 are restored to the revenue record with the clarification and the qualification that the same shall be subject to the outcome of the Regular Civil Suit No.4180 of 2004 and No.9275 of 2003 pending in the concerned Civil Court and also subject to the outcome of the proceedings of revision pending before the Tribunal in connection with the proceedings under Section 84C of the Tenancy Act. It is further made clear that it would be open to the aggrieved parties to pursue their rights, if any, pertaining to the property/ies in respect of which entry/ies is/are ordered to be restored by resorting to appropriate proceedings in the Civil Court, either in the pending Suit or by substantive suit as may be permissible in law.

Both the petitions are partly allowed to the aforesaid extent. Rule made absolute accordingly.

24.12.2004 (Jayant Patel, J.)

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